



Workforce No 21332

11 December 2018

## **New 'online workers alliance' goes after Amazon warehouse contractor**

The transport and shoppies unions have formed an alliance targeting online retailer Amazon (*see below*), as a former labour hire worker from its Sydney-based warehouse begins Fair Work Commission general protections action alleging he was sacked for joining a union.

The retailing giant has expanded across Australia over the past 12 months, opening its first warehouse "fulfillment centre" in Dandenong (WF 5/12/17) and recently opening a second in Moorebank, Sydney.

Amazon employs contractors across both warehouses. The Shop Distributive Allied Employees' Association (SDA) says one of its labour hire firms – Adecco – could be facing the Federal Court over an unfair sacking, after the matter was heard in the cmn on November 29.

The case involves warehouse worker Raj, who started working at the Sydney warehouse when it opened mid-year. He was the first worker at that warehouse to join a union - the SDA, a union spokesperson told *Workforce Daily*.

The SDA said Raj wore a "union cap and lanyard to work", and alleged Amazon "directed" him not to wear such union-branded clothing in the workplace.

It alleged Adecco representatives at the Amazon warehouse "objected to union organisers giving members promotional material with the union logo on it", and requested "material with the union logo on it not be given out to employees". Amazon and Adecco have denied doing this, the SDA said.

The union alleged that when organisers visited the Sydney warehouse, they were watched by the labour hire firm. It said Adecco was "in a position where they could monitor anyone who spoke to the union organisers".

The SDA said Raj became "concerned about the number of hours of work he was receiving" and was worried "it might have been connected to him joining"

the SDA. The union said Adecco denied this, but acknowledged Raj had asked for more hours of work.

The SDA said on October 5, Raj spoke to a union official in the warehouse lunchroom, and a member of Amazon management was present. Two days later, the union said Raj asked for more hours of work. He was dismissed on October 9.

The SDA said it was waiting on correspondence from the cmn outlining "the next steps", but believed the case will progress to the Federal Court.

Raj said he wanted to be reinstated at the warehouse, but did not regret joining the union.

"What happened to me was not fair," he said.

"I just want to get back to work at Amazon. I cannot say too much now, but I will say that I am so glad that I joined the union, because they are there for you when unfair things happen."

SDA NSW secretary Bernie Smith said the union was "not going to accept the sacking of a worker, who joined the union, who just wants to work enough hours to support his family".

*Workforce* has contacted Adecco for a response.

## **'Online alliance' between SDA and TWU part of global response**

The SDA NSW branch has announced it is joining forces with the Transport Workers' Union (TWU) "to address working conditions" in online retail – by setting up the Online Retail and Delivery Workers Alliance (ORDWA).

National and state branches of the SDA and TWU "will work together to organise online retail and delivery workers to secure collective bargaining, fair pay, secure work, workers' compensation, leave entitlements and a safe working environment", the unions said.

SDA NSW secretary Smith said the SDA already had 2,000 online retail worker members.

"We've seen shocking examples of workers in online retailers overseas being subjected to appalling working conditions," he said.

"We can't afford to let that happen in Australia, which is why we're taking the unprecedented step of joining together to maximise our capacity to protect workers in the industry."

The unions are particularly concerned about Amazon's "atrocious record" overseas.

"We have serious concerns about Amazon from what we have heard from unions overseas," Smith said.

"Workers at the Amazon Fulfilment Centre have been joining the SDA. Through this alliance the SDA and TWU will support each other to reach out to workers within the Amazon retail and transport supply chain in Australia to let them know they have rights and that they can exercise those rights."

TWU national secretary Michael Kaine came said the unions' aim was to "ensure Amazon workers in Australia are highly organised and acutely aware of their own rights and the company's responsibilities".

"It is vitally important that wealthy retailers like Amazon are held to account over practices throughout their supply chain. Our alliance will help achieve this goal," Kaine said.

The International Trade Union Confederation has (ITUC) called for Amazon to work with ORDWA.

"Amazon is not just changing the world of work, it is changing the way the world works. Local and global alliances are critical if we are to change the way Amazon treats its workers and the broader community," ITUC general secretary Sharan Burrow said.

### **Union claims 'untrue and sensationalist': Amazon**

An Amazon spokesperson told *Workforce* the unions' allegations about working conditions were "untrue and sensationalist".

"Amazon respects its associates right to choose to join or not join a labour union," he said.

"Amazon maintains an open-door policy that encourages associates to bring their comments, questions, and concerns directly to their management for discussion and resolution.

"We firmly believe this direct connection is the most effective way to understand and respond to the needs of the workforce."

### **Govt reveals new FW reg to thwart Workpac double-dipping impact**

The Federal Government will bring in regulation to thwart the double-dipping impact of the *Skene v Workpac* decision (WF 17/08/18), Industrial Relations minister Kelly O'Dwyer has confirmed on press-day.

The regulation – in lieu of legislation for now at least it seems – comes as the govt and employers go head-

to-head with unions in a test case brought by Workpac in the Federal Court.

Workpac is seeking declarations a former employee, Robert Rossato, was a casual and not entitled to accrued leave entitlements (WF 5/10/18). *The case – arguably a Skene appeal in another guise – will explore the extent to which casual loading already paid by an employer to an employee can be 'set off', or accounted for, against claimed leave entitlements.*

CFMMEU national construction division president Tony Maher welcomed the *Skene v Workpac* decision (WF 17/08/18) as a "major victory over rampant misuse of casual workers in coal mining".

"In many cases they are casual in name only, working side by side with permanent employees on the same rosters over extended periods, but with no job security," Maher said.

However, O'Dwyer said intervention was needed now rather than later to give business "certainty" and "greater clarity of existing general law rights to offset payments when claims are made to pay for the same entitlements twice".

"Small businesses have told us that they are concerned that a recent Federal Court case may give rise to claims to pay additional amounts for leave entitlements when they have already paid a casual loading in lieu of those leave entitlements," O'Dwyer said.

She said "every employer must comply with their legal obligations ... but being forced to pay for entitlements twice is unfair and potentially crippling for many small businesses".

"This is an important issue to maintain confidence in employment, for both employers and employees" O'Dwyer said.

### **'Complimentary measures'**

The IR Minister said her intervention in *Rossato* (WF 19/10/18) and introducing the new regulation were "complementary measures, both seeking to provide certainty around existing general law rights and to prevent employers having to pay employees their benefits twice".

She said the govt would recommend to the Governor-General that he make the new Fair Work regulation on double-dipping.

The new regulation will provide that, where an employer has paid an identifiable casual loading to an employee engaged as a casual, it may potentially be offset against any subsequent claim for NES entitlements.

"It will of course, still remain a matter for a court to decide to apply an offset in any particular circumstances," a govt spokesperson said.

## Employers hail 'decisive action'

The Australian Industry Group (Ai Group) said the business community was "relieved" by the govt's "decisive action".

"It is obviously unfair for an employee who has been engaged as a casual and paid a casual loading to be able to pursue years of back-pay for annual leave," Ai Group chief executive Innes Willox said. He said the regulation would "provide essential protection against unfair claims, and will be good for jobs and investment".

The Australian Mines & Metals Association (AMMA) said the regulation would support the "common understanding around this issue in Australian workplaces, ensuring there is no 'double dipping' if casuals are deemed to be full-time employees".

AMMA chief executive Steve Knott said govt inaction would have significantly hurt businesses.

"Had this been allowed to stand, many SMEs and big businesses alike would've been crippled, not to mention the fallout which would have resulted in administrators being appointed and the significant drain on the Federal Government's Fair Entitlements Scheme," Knott said.

## ACTU slams govt for protecting employers

The Australian Council of Trade Unions (ACTU) said the govt was "trying to shield employers from the costs of ripping off workers".

"Workers being stuck for years in casual roles while they do the same work as a full time or part time employee is a massive problem which has been created by employers trying to escape their obligations to their employees," ACTU secretary Sally McManus said.

"Employers should pay a price for decades of abusing loopholes in our broken system to rip off workers. It is not the place of the Minister to protect businesses from the consequences of their actions," she said.

## Govt to introduce casual employee conversion rights FW legislation

The Federal Government will introduce legislation giving casual employees the right to ask to convert to part-time or full-time jobs, Industrial Relations minister Kelly O'Dwyer confirmed on pressday.

The Fair Work amendment extends the Fair Work Commission's July 2017 decision (*WF 7/07/17*, *WF 5/10/18*) including a new model conversion clause in 85 modern awards to all Fair Work Act covered workers.

"If award reliant employees have the right to make a request and it is subject to reasonable safeguards for employers, it is only fair that the same right is extend-

ed to other casuals who currently do not have the same right," O'Dwyer said.

Under the modern award conversion clause, an employee who has worked an average of 38 hours a week for at least 12 months can request for their position to be converted to a permanent full-time job.

Those who worked less than 38 hours on average over 12 months can ask to be made permanent part-time employees based on "pattern of hours".

Requests have to be made in writing, which employers can refuse only on "reasonable grounds" and after discussions have taken place with the workers.

## Ai Group wants to be consulted on final wording to avoid 'unintended consequences'

Not having seen the wording of the planned FW amendment, employers gave tentative support.

"Employers will understand the Govt's decision to address casual conversion issues in the Fair Work Act, given the FWC's recent decision to extend casual conversion rights across the award system," Australian Industry Group chief executive Innes Willox said.

"Critically, the right of an employer to refuse an employee's request to convert on reasonable business grounds was preserved by the FWC and will be preserved in the Govt's proposed legislation.

"The drafting of the amendments to the FW Act will require considerable care to avoid any unintended consequences and we look forward to participating in the Govt's consultation process," Willox said.

He said "experience shows that the majority of casual employees, when given the option to convert, prefer to remain employed on a casual basis".

## Bank protocol's 'risk' to finance workers accused of misconduct

Fair Work Commissioner (FWC) Sarah McKinnon has warned bank workers are subjected to "a new layer of risk" that is "potentially significant for employees" wanting to stay in the finance industry after being accused of misconduct.

And it is one owned by industry employers, separate to and outside the bounds of the FWC.

In an unfair dismissal involving Westpac, Cmr McKinnon said the Australian Banking Association's (ABA) banking industry conduct background check protocol, brought in last year, imposed "a new layer of risk on employees working in the financial institutions who are signatory to it".

"If an employee ceases employment in circumstances characterised by their employer as misconduct, the ABA protocol requires that misconduct to be

disclosed to prospective employers of the employee," she said.

"While disclosure can only be made with the consent of an employee, the likelihood is that an employee who does not consent will be treated as an employee to whom misconduct has been attributed."

She said the consequences of a record of misconduct were "potentially significant for employees because it lasts for five years".

"In that period, the record may well prevent them from working in many of the major financial institutions in Australia," the cmr said.

"That is the case whether or not alleged misconduct has been proven.

"I would also observe that it is not for the cmn to find whether an employee has committed misconduct for the purposes of the ABA protocol. That is a matter for

the signatories to that protocol, once apprised of all relevant facts."

ABA will also bring in a new banking code of practice by July 2019, which contains "more information about changes to customers' accounts, and greater assistance to vulnerable customers".

Banks are currently training about 130,000 staff and changing systems to meet the new requirements.

*(Daniel Volker v Westpac Banking Corporation T/A Westpac [2018],FWC 7348, 06/12/2018)*

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